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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,491	09/21/2006	Giuseppe Scuzzo	118.038US01	2088
27073 7590 06/04/2008 LEFFERT JAY & POLGLAZE, P.A. P.O. BOX 581009 MINNEAPOLIS, MN 55458-1009				
EXAMINER				
SINGH, SUNIL K				
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
06/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,491

Applicant(s)

SCUZZO, GIUSEPPE

Examiner

Sunil K. Singh

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 15 and 17-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 15 and 17-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

This office action is in response to applicant's amendments filed on 03/11/2008

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it contains the legal phraseology "comprising". The Examiner suggests amending the term "comprising" to state --including--. Correction is required. See MPEP § 608.01(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,15,17,19,21-23, and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Broussard (US 4,917,602).

Broussard discloses an orthodontic bracket (150) that includes: a base (158) capable of being fastened on the lingual side of a tooth (Column 11, Lines 58-59); a main body raising from the base (Figs. 1-3) being constructed in a single piece with the base having a plurality of projecting engaging tabs (179) capable of engaging and retaining a binding system (169) (Figs. 5 and 6); a housing (Figs. 1-7) for an orthodontic wire (151) that extends along the dental arch (Figs. 6-8); housing being interposed between tabs (Figs. 1-8) and inclined so to form an acute angle with respect to the base (Figs. 2, 14) and is opened towards a bottom of the tooth when the bracket is fastened onto the inclined lingual side of the tooth; a retaining member (163) that faces the housing and extends along a limited segment of the housing; the retaining member abuts the orthodontic wire (Figs. 6-12); wherein the retaining member having a rounded profile and is in the form of a projecting fin (Fig. 3); the retaining member is in a centered position relative to the housing (Fig. 3) and arranged above the plurality of tabs (179) (Figs. 1-3); the retaining member is constructed in a single piece with the remaining part of the bracket (Fig. 3); wherein the plurality of tabs (179) comprises a first, as second, and a third tab (Fig. 3); wherein the first and second tabs being arranged at the opposite side of the housing with respect to third tab (Fig. 3); wherein the retaining member (163) is arranged between the plurality of tabs (179) and oriented in an opposite direction thereto (Figs. 3, 5-8, 12); wherein the housing (155) is in the form of a groove extending transversely relative to base; and wherein the housing is defined by two or more walls set longitudinally side by side (Figs. 1, 2, 3, 14). Broussard further

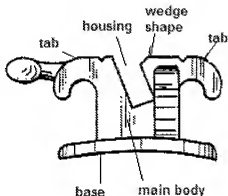
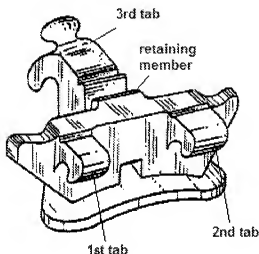
discloses an orthodontic implant that comprises an orthodontic bracket as described above (Figs. 5-8).

5. Claims 1,17-22, and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Viazis (US D367116).

Viazis discloses an orthodontic bracket (Figs. 1-20) that includes: a base (see Figs. 2 and 4 that are reproduced below); a main body (see Fig. Below) raised from base constructed in a single piece with the base having a plurality of projecting engaging tabs (Fig. Below) that are capable of engaging and retaining a binding system; a housing (Fig. Below) for an orthodontic wire, the housing being interposed between the tabs and inclined so to form an acute angle with respect to the base (see Fig. 2); the acute angle opening towards a bottom of the tooth when the bracket is fastened onto the inclined lingual side of the tooth; a retaining member (see fig. Below) that faces the housing and extends only along a limited segment of the housing and is capable of abutting against the arch wire (See Figs. 2 and 4); wherein the retaining member is in the form of a projecting fin having a substantially wedge shaped profile (see Fig. Below); the retaining member is in a centered position relative to the housing; the retaining member is integral with the remaining parts of the bracket (Figs. 2,4); the retaining member constructed in a single piece with the remaining part of the bracket itself (See Fig. Below); the retaining member is arranged above the tabs (Fig. 4); wherein the plurality of tabs comprises a first, a second, a third tab (Fig. Below) and having a rounded profile; wherein the first and second tabs are arranged at the opposite side of the housing (Fig. Below); wherein the retaining member is arranged between the first

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and second tab and is oriented in the opposite direction (Fig. Below); wherein the housing is in the form of a groove extending transversely relative to the base; and wherein the housing is defined by two or more walls set longitudinally side by side, having a cross section with a broken-line profile (Figs. 2,4,8,9,11,15,16,18).



Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

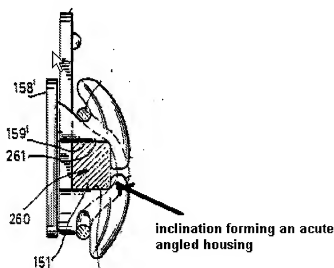
7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Viazis (US D367, 116).

Viazis discloses the invention substantially as claimed except for a bracket having a thickness, defined between the base and retaining member, in an interval of about 1-1.2mm. However, it would have been obvious to modify Viazis to include a

bracket having portion between the base and retaining member to have a thickness of 1-1.2mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. See *In re Aller*, 105 USPQ 233.

Response to Arguments

8. Applicant's arguments filed 03/11/2008 have been fully considered but they are not persuasive. Applicant argues that Broussard does not disclose a housing having an acute angle. However, the examiner points out that Broussard does disclose a housing having an acute angle as shown in Fig. 14 that is reproduced below. Broussard clearly discloses the two tie-wings that are inclined towards each other to form an acute housing that better holds the archwire within the slot.



Applicant further argues that Viazis bracket is not a bracket for lingual orthodontics. However, the examiner disagrees. Since the Viazis patent is a design patent, the examiner can not determine what type of orthodontics the Viazis's bracket is

intended to be used for. Furthermore, since Viazis's reference meets the structural limitations as claimed, it is therefore capable of being used for lingual orthodontics. The applicant further argues that since the slot is inclined towards the 3rd tab (the single tab on the side of the device) it is therefore not capable of being used for lingual orthodontics. However, the examiner points out that although Viazis's slot can be inclined towards the 3rd tab (as shown in Figure 2), it can also be inclined towards the double tabs (as shown in Figure 8). Furthermore, the applicant does not specify in the claims the angle/direction of which the inclination faces. Therefore, the rejection is deemed proper.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil K. Singh whose telephone number is (571) 272-3460. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris L. Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

05/28/2008
/Melba Bumgarner/
Primary Examiner, Art Unit 3732

/Sunil K Singh/
Examiner
Art Unit 3732